

200724032



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 23 2007

T:EP:RA:TS

Uniform Issue List: 408.01-00

Legend:

Decedent A =

Trust D =

State F =

Date K =

Date L =

Date M =

Date N =

Date P =

Date Q =

Date R =

Amount S =

Amount T =

Amount U =

IRA X =

IRA Y =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated October 24, 2006, concerning the proper rollover treatment of distributions from Decedent A's individual retirement Accounts (IRA X and IRA Y) under section 408d(3) of the Internal Revenue Code (Code). Correspondence dated February 2, 2007, supplemented the request.

Your authorized representative has submitted the following facts and representations in support of your ruling request:

You were born on Date N, 1955, and are under age 70 ½. Decedent A was born on Date L, 1951 and died on Date M, 2006, at age 54, a resident of State F. You were married to Decedent A at the time of his death. Decedent A maintained IRA X and IRA Y. On Date R, 2005, he named Trust D as the beneficiary of his IRA X and IRA Y.

Trust D was executed on Date Q, 2002, and has not been amended since the death of Decedent A.

The value of IRA X as of the Date K, 2005, was Amount S. The value of IRA Y, as of Date K, 2005 was Amount T. The total value of both IRAs was Amount U.

You and Decedent A were co-trustees of Trust D. Upon the death of Decedent A, and pursuant to Article One, Section B, of Trust D, you became the sole trustee of Trust D. As sole trustee, you have full control over Trust D assets, pursuant to Articles One and Three of Trust D.

Pursuant to Article Three, Section B, you have the power to amend Trust D, in whole or in part. Pursuant to Article Three, Section C, you have the power to revoke Trust D, in whole or in part. However, it has been represented to the Service that Trust D has not been revoked. You have also represented that no property interest passing to the trustees under Trust D will be disclaimed pursuant to Article Four, Section A-28 of Trust D.

Under Article One, Section J of Trust D, you have the exclusive right to the use and benefit of the income and assets of Trust D, and thus you, as trustee, have the power to make payments of income or principal to yourself as sole remaining beneficiary of Trust D assets.

Pursuant to Article One, Section J. of Trust D, you intend to pay to yourself all amounts standing in IRA X and IRA Y due Trust D. Incident to said request, you will make direct trustee-to-trustee transfers of the IRA X and the IRA Y assets into an IRA set up and maintained in your own name and to treat the transferee IRA as your own IRA.

Based on the above facts and representations, you, through your authorized representative, request the following rulings:

1. That Decedent A's IRA X and IRA Y will not be treated as inherited IRAs under Code section 408(d)(3)(c);
2. That for purposes of Code section 408(d)(3) and section 1.408-8, of the "Final" Income Tax Regulations ("regulations"), you may be treated as the beneficiary of Decedent A's IRA X and his IRA Y so that the IRA X and IRA Y account balances may be transferred from Decedent A's IRA X and IRA Y into an IRA set up and maintained in your name; and
3. That the amounts standing in IRA X and IRA Y to be transferred into an IRA set up and maintained in your name by means of trustee-to-trustee transfers, will not be included in your gross income and will not be taxed under Code section 408(d) in the year in which transferred (2007).

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her

husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Code section 408(d)(3)(E) of the Code provides, in general, that the rollover rules of Code section 408(d)(3) do not apply to any amounts required to be distributed in accordance with Code sections 401(a)(9) and 408(a)(6).

Code section 401(a)(9)(A) provides, in relevant part, that distributions from a retirement plan qualified within the meaning of Code section 401(a) must begin no later than the plan participant's "required beginning date" and must be paid over a period of time that may extend to the joint life expectancies of the plan participant and his/her designated beneficiary.

Code section 408(a)(6) extends the Code section 401(a)(9) requirements to IRAs described in Code section 408(a). Thus, in short, an IRA owner may receive required distributions over her life expectancy or over a period not to exceed the joint life expectancies of the IRA holder and her designated beneficiary.

On April 17, 2002, final Income Tax Regulations ("regulations") were published in the Federal Register with respect to Code section 401(a)(9) and 408(a)(6). (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner. The beneficiary accomplishing such a post-death trustee to trustee need not be the surviving spouse of a deceased IRA holder.

With respect to your ruling requests, generally, if either a decedent's plan or IRA proceeds pass through a third party, e.g., a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, you are the only current trustee and beneficiary of Trust D. Under the terms of Trust D you have the unrestricted right, as trustee, to distribute the proceeds of IRA X and IRA Y to yourself as beneficiary of Trust D. Pursuant to the provisions of Trust D, you, as trustee, will request that all amounts standing in IRA X and IRA Y be paid to Trust D, and then, as beneficiary, you will direct that the Trust D trustee directly transfer the IRA X and IRA Y proceeds, by means of trustee-to-trustee transfers, from said IRA X and IRA Y into an IRA set up and maintained in your name. Said transaction will occur during calendar years 2007.

The Service notes that under this set of circumstances, all actions taken with respect to both requesting that the IRA X and IRA Y assets be paid to Trust D and their subsequent transfer into an IRA set up and maintained in your name will be accomplished by you. Thus, under the facts stated above, you are to be treated as the payee and beneficiary of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3). Thus, with respect to your ruling requests, we conclude:

1. That Decedent A's IRA X and IRA Y will not be treated as inherited IRAs under Code section 408(d)(3)(c);
2. That for purposes of Code section 408(d)(3) and section 1.408-8 of the "Final" Income Tax Regulations (regulations), you may be treated as the beneficiary of Decedent A's IRA X and IRA Y so that the IRA X and IRA Y account balances may be directly transferred from Decedent A's IRA X and IRA Y into an IRA set up and maintained in your name; and
3. That the amounts standing in IRA X and IRA Y to be transferred into an IRA set up and maintained in your name by means of trustee-to-trustee transfers will not be included in your gross income and will not be taxed under Code section 408(d) in the year in which transferred (2007).

This ruling letter assumes that IRA X and IRA Y either are or were qualified under section 408(a) of the Code at all times relevant thereto. It also assumes that the

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transferee IRA to be set up by you will also meet the requirements of Code section 408(a) at all times relevant thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

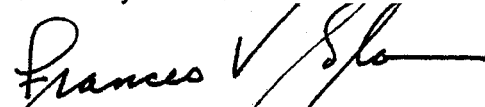
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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call
(not a toll free number).

(ID) at ()

Sincerely Yours.



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling

CC: